APPENDIX A

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 20th day of November, 1973, the following order was made and entered, to-wit:

THE COMMITTEE ON LEGAL ETHICS OF THE WEST VIRGINIA STATE BAR, *Complainant*

13396

vs.

PHILIP JAMES GRAZIANI, *Defendant*

The Court having maturely considered the verified complaint praying for the annulment of the license to practice law of Philip James Graziani, together with the original Report of the Committee on Legal Ethics, as provided by Part C, Article VI of the By-Laws, Rules and Regulation of the West Virginia State Bar and certain papers and documents being Findings and Recommendation of the Committee on Legal Ethics; exhibits Nos. 1 to 7, inclusive, the record and transcript of the formal hearing held on May 3, 1973; and, defendant's motion to dismiss the statement of charges and his answer to said charges and exhibits therewith; the rule awarded thereon; the answer with exhibits of the defendant, Philip James Graziani; and upon the argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that the defendant, Philip James Graziani, has been guilty of a crime involving moral turpitude, and his

license to practice law in the State of West Virginia should be annulled.

Accordingly, it is therefore adjudged and ordered that the license and authority of the defendant, Philip James Graziani, to practice law in the State of West Virginia, be, and the same is hereby revoked and annulled.

The syllabus of points adjudicated, prefixed to the written opinion *Per Curiam*, was concurred in by Justices Berry, Caplan, Haden, Sprouse and Neely.

The Clerk of this Court is hereby directed promptly to certify a copy of this order to the Secretary of The West Virginia State Bar, pursuant to Section 32 of Article VI of the By-Laws of The West Virginia State Bar, and a duly attested copy of this order shall be mailed to the defendant, with return receipt requested, and to counsel of record in this proceeding.

A True Copy

Attest: George W. Singleton
Clerk Supreme Court of Appeals

APPENDIX B

No. 13396

THE COMMITTEE ON LEGAL ETHICS OF THE WEST VIRGINIA STATE BAR

v.

PHILIP JAMES GRAZIANI

Disciplinary Proceeding — License to practice law annulled

PER CURIAM

1. It is generally held that immunity statutes apply only to criminal prosecutions.

2. Disbarment proceedings are neither civil actions nor criminal prosecutions but are special proceedings which are peculiar in their nature.

3. Testimony or evidence given by an attorney under a grant of immunity with regard to testimony before a grand jury can be used in disbarment proceedings against the attorney.

4. Bribery and conspiracy to commit bribery are crimes that involve moral turpitude and warrant the disbarment of any attorney guilty of such crimes.

Per Curiam:

This is a proceeding for disciplinary action instituted by the Committee on Legal Ethics of the West Virginia State Bar pursuant to the authority conferred by Part D, Article VI of the By-Laws of the West Virginia State Bar. The defendant, Philip James Grazi-

ani, a licensed attorney and member of the West Virginia State Bar, was charged with professional misconduct by the Committee on Legal Ethics. The verified complaint alleges that the defendant combined and conspired with others to commit bribery and did bribe James Frederick Haught, a Federal Housing Commissioner of West Virginia. Thus, the Committee on Legal Ethics contends that the defendant's license to practice law should be annulled. On July 20, 1972 this Court issued a rule directing the defendant to appear and show cause why his license to practice law should not be annulled. On September 19, 1972 the case was submitted for decision upon briefs and oral arguments on behalf of the respective parties.

It appears from the pleadings that in the latter part of 1969 the defendant, after several conferences with law enforcement officials, volunteered to testify before the Grand Jury of Kanawha County and was assured that no statements he made would be used against him. On December 10, 1969 the defendant was summoned to appear before the Grand Jury of Kanawha County and testified after the Intermediate Court of Kanawha County entered an order granting defendant "* * * full and complete immunity from prosecution under Federal or State law * * *."

On August 5, 1971 the defendant appeared before a grand jury of the United States District Court for the Southern District of West Virginia and testified to the effect that C. Donald Robertson and Dana Aubrey Robertson had conspired to bribe and did bribe James Frederick Haught. Subsequently, C. Donald Robertson, Dana Aubrey Robertson, and James Frederick Haught were indicted for violating Section 201, Title

18 of the United States Code (bribery of a public official) and Section 1952, Title 18, United States Code (interstate transportation in aid of racketeering enterprises). All three subsequently pleaded guilty, were fined and imprisoned.

The Committee on Legal Ethics was subsequently informed that the defendant had testified before the federal grand jury about his own participation in the bribery conspiracy. On February 12, 1973 the Committee filed a petition in the United States District Court for the Southern District of West Virginia seeking disclosure of the grand jury minutes with respect to the testimony of the defendant and one Arthur J. Tarley. Over the objection of the defendant's attorney, the United States District Court ordered the United States Attorney to provide the Committee on Legal Ethics with the requested transcript of testimony.

After reviewing the grand jury testimony, the Committee on Legal Ethics informed the defendant that a formal hearing would be held. The hearing was held on May 3, 1973 and defendant's attorney appeared on behalf of the defendant and objected to the use of the grand jury transcript, contending the defendant had been granted immunity from any and all proceedings against him and thus his testimony could not be used by the Committee on Legal Ethics. Counsel for the defendant stated that no evidence would be offered on behalf of the defendant and that the defendant would rely solely on his immunity defense to the charges against him. The Committee overruled the defendant's motion to dismiss the statement of charges against him on the grounds that the use of defendant's

federal grand jury testimony did not violate his constitutional right against self-incrimination.

The defendant's testimony before the federal grand jury revealed that the defendant represented Centurion Corporation, a construction company. The president of Centurion Corporation, Arthur J. Tarley, and a Federal Housing Director, James Frederick Haught, entered into an arrangement in which Tarley would pay Haught a $50 "finder's fee" for each apartment unit constructed by Centurion Corporation. Tarley informed the defendant of this arrangement and it was agreed that Tarley would forward funds to the defendant for the so-called "finder's fee" and the defendant would pass the funds on to Haught. On six separate occasions over approximately 16 months, the defendant gave Haught $18,700 in cash that had been sent to the defendant by Tarley. The defendant was also aware of another $12,500 that was given to Haught by the defendant's law partner, Dana Aubrey Robertson, which sum was drawn out of the partnership account of the law firm.

The Committee concluded from the testimony that the defendant was engaged in bribery and thus he was guilty of professional misconduct and his license to practice law should be annulled. A petition was then filed in this Court to annual the defendant's license to practice law.

The question involved in the instant case is whether the testimony of an attorney given before the grand jury under a grant of immunity can be used in a disbarment proceeding against the attorney. It is generally held that immunity statutes apply only to criminal prosecutions. *Ullmann* v. *United States*, 350 U.S.

422, 76 S.Ct. 497, 100 L.Ed. 511; *Zuckerman* v. *Greason*, 285 N.Y.S.2d. 1, 231 N.E.2d 718; *In Re Schwarz*, 51 Ill.2d. 334, 282 N.E.2d 680; *State* v. *Simon*, 132 W.Va. 322, 52 S.E.2d 725; *State* v. *Abdella*, 139 W.Va. 428, 82 S.E.2d 913.

It is true that the West Virginia cases cited above, *Simon* and *Abdella*, involved criminal prosecutions. However, in connection with the matter the Court stated in the *Abdella* case: "The Legislature, in our opinion, intended by the enactment of Code, 57-5-2, to give to a witness who is required to testify or produce evidence of a self-criminating nature an immunity from a criminal prosecution which is based in any way upon the self-criminating evidence, an immunity which is coextensive with the privileges which the witness would have under the Fifth Amendment to the Constitution of the United States, and Article III, Section 5, of the Constitution of West Virginia, were it not for the enactment of the statute. * * *."

It is the contention of the defendant that a disbarment proceeding is a criminal proceeding, and, therefore, the testimony of the defendant given before the federal grand jury cannot be used in this proceeding to disbar him. We have found no cases that hold that disbarment proceedings are criminal proceedings. If disciplinary proceedings were held to be criminal proceedings then the Legal Ethics Committee of the State Bar, where such cases are initiated, would have the burden of proving beyond a reasonable doubt the issues involved and the case would have to be tried by a jury. It has been held that the evidence must be full, prepondering and clear in disciplinary actions, and not beyond a reasonable doubt. *Committee on Legal Ethics*

v. *Lewis*, W.Va. , 197 S.E.2d 312. It is true that one case decided by the Supreme Court of the United States, *In Re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117, indicated that disbarment proceedings were quasi-criminal proceedings and held that an attorney is entitled to procedural due process in disbarment proceedings. However, a quasi-criminal proceeding does not mean it is a criminal proceeding, and, in fact, this Court held in the case of *In Re Brown*, W.Va. , 197 S.E.2d 814, that such proceedings are neither civil actions nor criminal prosecutions but that such proceedings are special proceedings which are peculiar in their nature.

It is also the contention of the defendant that the immunity statute, Code, 57-5-2, applies not only to criminal but also to civil actions as well, because it states that such self-criminating testimony or evidence shall not be used in "any proceeding". We are of the opinion that the statute applies only to any criminal proceeding because the immunity statutes in many states are broader than in this state and typically provide that the immunity applies where there is any type of penalty or forfeiture involved. But it has been held in those states with such broad immunity statutes that the immunity applies only to criminal proceedings. *In Re Rouss*, 221 N.Y.81, 116 N.E. 782, (Cert. denied 246 U.S. 661, 38 S.Ct. 332, 62 L.Ed. 927); *Ullmann* v. *United States*, *supra*.

It has been repeatedly held that testimony or evidence given by an attorney under a grant of immunity could be used in disbarment proceedings against the attorney. *In Re Biggers*, 24 Okla. 842, 104 P. 1083; *In Re Rouss*, 221 N.Y. 81, 116 N.E. 782; *The Florida Bar* v.

Massfeller, (Fla.) 170 So.2d 834; *In Re Farrell*, 27 A.D.2d 61, 276 N.Y.S.2d 61; *In Re Schwarz*, 51 Ill.2d 334, 282 N.E.2d 689. The case of *In Re Rouss* was decided by Judge Cardozo in 1917 before he was elevated to the Supreme Court of the United States. The facts are on all fours with the case at bar and Judge Cardozo held that immunity from any penalty or forfeiture as provided by the immunity statute in New York did not apply to disbarment proceedings within the meaning of the immunity statute and stated in that case that: "* * * We will not declare, unless driven to it by sheer necessity, that a confessed criminal has been intrenched by the very confession of his guilt beyond the power of removal [from the Bar]."

In the case of *The Florida Bar* v. *Massfeller, supra*, decided in 1964, it was held that where an attorney admitted to his misconduct he could not rely on the immunity statute in a subsequent disbarment proceeding. The Florida Court, in that case, said: "We hold that it was not the intent of the legislative act granting immunity from 'prosecution, penalty or forfeiture' to immunize members of the Bar from disciplinary proceedings or punishment instituted or imposed by or under authority of rules of this Court, for a contrary opinion would recognize the power and purpose of the Legislature to abridge or curtail the constitutional power of this court as part of a coordinate and equal branch of the government of this state. The Constitution of this state vests exclusive jurisdiction over the admission and discipline of attorneys at law in this Court and authorizes it to exercise such jurisdiction through delegation of authority to the circuit courts and district courts of appeal, or by commissioners of members of the Bar, subject to this court's supervision and review.

* * *." See Article VIII, Section 1 of the Constitution of West Virginia and Code, 51-1-4a, as amended, for such powers in this State.

In the case of *In Re Schwarz, supra*, decided in 1972, it was held that the immunity statute in Illinois extended only to criminal prosecutions and that disbarment proceedings, based on an attorney's testimony after he had been granted immunity at the trial of a judge whom he had bribed, did not violate the attorney's rights under the Fifth Amendment.

The defendant relies on the case of *Spevack* v. *Klein*, 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574. That case merely held that an attorney could not be disbarred for refusing to produce documents in a judicial inquiry into professional misconduct of an attorney. It was contended by the respondent attorney in the *Schwarz* case that the holding in the *Spevack* case was applicable to disbarment proceedings and that testimony given under a grant of immunity could not be used in such proceeding. The Court in that case stated that such interpretation of the *Spevack* case was entirely too broad and allowed such testimony under a grant of immunity to be used in a disbarment proceeding.

It was held in the case of *Anderson* v. *Coulter*, 16 Ariz. App. 27, 490 P.2d 856, where the immunity statute stated that a witness compelled to testify could not be prosecuted or subjected to any penalty or forfeiture, the term penalty or forfeiture was restricted to penalties or forfeitures in a criminal proceeding and that the immunity statute had no effect on subsequent civil sanctions against the witness.

The record in this case indicates that the defendant was granted immunity by the Intermediate Court of

Kanawha County with regard to his testimony before the grand jury of said court, apparently for violations of the laws of the State of West Virginia, and there is no indication that he was granted immunity by the United States District Court when he testified before the grand jury of that Court, which related to bribery and conspiracy to commit bribery of a federal employee or officer which was not a crime against the State of West Virginia. However, the testimony arose out of the testimony the defendant gave before the grand jury of the Intermediate Court of Kanawha County and it has been held that such grant of immunity must afford protection and extend to federal proceedings. *Murphy v. Waterfront Commission*, 378 U.S. 52, 84 S.Ct. 1594, 12 L.Ed.2d 678.

The testimony before the federal grand jury which is made a part of the record in this proceeding clearly shows that the defendant was guilty of bribery and conspiracy to commit bribery. It has been repeatedly held that such crimes are crimes that involve moral turpitude which warrant the disbarment of any attorney guilty of such crimes. *In re Barron*, W.Va. , 181 S.E.2d 273; *In re Dana Aubrey Robertson* and *In re C. Donald Robertson*, W.Va. , 194 S.E.2d 650; *In re Brown*, W.Va. , 197 S.E.2d 814. Thus, the testimony of the defendant in this case before the grand jury amounts to a confession of guilt of a crime involving moral turpitude and warrants the disbarment of the defendant. *In Re Rouss, supra; In Re Schwarz, supra.*

For the reasons stated herein, the defendant's license to practice law is annulled.

License to practice law annulled.

APPENDIX C

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 17th day of December, 1973, the following order was made and entered, to-wit:

THE COMMITTTE ON LEGAL ETHICS OF THE WEST VIRGINIA STATE BAR, *Complainant*
13396

vs.

PHILIP JAMES GRAZIANI, *Defendant*

The petition for rehearing and reargument filed in this proceeding having been maturely considered, a majority of the Court is of opinion to, and doth hereby deny the prayer of the petition and doth order that the final order entered herein be made absolute and certified as heretofore directed. Justice Neely would grant.

A True Copy

Attest: George W. Singleton
Clerk Supreme Court of Appeals

APPENDIX D

IN THE INTERMEDIATE COURT OF
KANAWHA COUNTY

In Re:)
Grand Jury)
September Term)

ORDER

Comes now the State of West Virginia by Patrick Casey, the Prosecuting Attorney in and for Kanawha County, West Virginia, and comes Philip Graziani in person and by his attorney pursuant to motion to compel testimony filed on behalf of the State of West Virginia pursuant to West Virginia Code, Chapter 57, Article 5, Section 2, and the affidavit filed in support of said motion. It is represented unto the Court inter alia by the said Prosecuting Attorney of Kanwaha County that the aforementioned Philip Graziani has refused to give any testimony before the grand jury, claiming his various consitutional rights under the United State Consitution and the West Virginia Constitution and their Amendments. The Court after hearing statements of counsel and argument of the State of West Virginia does hereby find that the ends of justice will be promoted by compelling the said Philip Graziani to testify regarding the various matters being investigated by said grand jury and if necessary give evidence that may incriminate him or tend to incriminate him and therefore it is hereby ORDERED that the said Philip Graziani is hereby compelled to answer all questions and to testify and produce such documents as he may have relative thereto before the

grand jury which was impaneled in Kanawha County Intermediate Court on the 10th day of November, 1969.

And it is further ORDERED that the said Philip Graziani shall have complete legal immunity in regard thereto as the law provides and said Philip Graziani is hereby granted full and complete immunity from prosecution under Federal or State laws insofar as the matters being investigated by said grand jury are concerned, and insofar as any testimony he gives incriminates or tends to incriminate said Philip Graziani, and it is further ORDERED that as a result of such testimony and/or production of records said Philip Graziani shall not be prosecuted or subjected to any penalties or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled to testify and said testimony shall not be used as evidence in any proceedings against the said Philip Graziani in any Court either State, Federal or otherwise.

It is further ORDERED that nothing contained in this order shall limit or waive the rights of the said Philip Graziani or any immunity which the said Philip Graziani may have under other provisions of law.

ENTER:

George W. Wood
Judge

Date: December 10, 1969
Presented by:
Patrick Casey

APPENDIX E

AFFIDAVIT

The undersigned, Patrick Casey, having been duly sworn, doth depose and say that:

He is the Prosecuting Attorney for Kanawha County, West Virginia and was duly qualified in acting as such during the months of November and December, 1969, and previous thereof. That on or about the month of December, 1969, the undersigned had a conference with Philip J. Graziani and his then attorney, together with Charles L. Hughes, a Member of the Department of Public Safety of West Virginia and John T. Coyne, Investigator for the Purchasing, Practices and Procedures Committee of the State of West Virginia.

That during such conference with Mr. Graziani, and his then attorney, Mr. Graziani volunteered to furnish certain information that would aid and assist the State of West Virginia and the United States Government Authorities in investigations. Definite promises were made to Mr. Graziani by the undersigned as well as Charles L. Hughes and John T. Coyne that nothing said or furnished of any evidentiary nature by Mr. Graziani concerning State or United States crimes would be used against Mr. Graziani in any way, shape or form. That Mr. Graziani would be given immunity by the Intermediate Court of Kanawha County, West Virginia with respect to such information and that no evidentiary matters traceable to such statements and evidence would be held against Mr. Graziani. In particular, assurances were made to Mr. Graziani that no

penalty or forfeiture or civil obligations would arise by reason of the information furnished by him.

Afterwards Mr. Graziani was summoned to appear before the Grand Jury of Kanawha County, West Virginia, and was compelled to give evidence after an order of immunity was signed by the Court. As a direct result of Mr. Graziani's testimony before the Kanawha County Grand Jury, evidence was obtained. Later the evidence given to said state Grand Jury was furnished to Mr. Warren Upton, United States Attorney for the Southern District of West Virginia and after said testimony by Mr. Graziani the United States Attorney for the Southern District of West Virginia caused a United States Investigation to be made wherein the Federal Bureau of Investigation assisted in the same.

Afterwards said Philip J. Graziani was summoned to appear before the United States Grand Jury held for the Southern District of West Virginia and such grand jury evidence given to the United States District Court, the undersigned was informed and is informed that the Legal Ethics Committee of the State Bar of West Virginia asked to examine the Grand Jury minutes. The undersigned, Prosecuting Attorney considers that because said information stemmed from a grand jury proceeding by said Kanawha County Grand Jury, which said grand jury matters were Ordered by the Judge of the Intermediate Court to remain secret, and that such exposure of such minutes at this time would violate the spirit of the Order of the Intermediate Court of Kanawha County, West Virginia, entered on December 10, 1969, and the assurances given to said

witness by the Judge of the Intermediate Court, Prosecuting Attorney of Kanawha County, West Virginia and other officials.

[Signature] Patrick Casey

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to-wit:

I, Sarah Sheer, the undersigned Notary Public in and for the County and State aforesaid, whose commission expires on the 8th day of September, 1981, do hereby certify that Patrick Casey whose name is signed to the foregoing Affidavit personally appeared before me in my County and State aforesaid, this 15th day of March, 1973 and acknowledged the same.

GIVEN under my hand and seal this 15th day of March, 1973.

[Signature] Sarah Sheer
Notary Public

AFFIDAVIT

John T. Coyne, being first sworn, deposes and says:

From February 26, 1969 to June 30, 1970 I served as Chief Investigative Attorney for the Purchasing Practices and Procedures Commission. During the months of November 1969 to February 1970 I had occasion to work with Phillip Graziani in furtherance of the work of the PPPC.

When I first met Phillip Graziani it was in the office of an attorney who sought a commitment from the Staff Director that nothing Mr. Graziani might say in an attempt to cooperate with the PPC would be used to harm him in any way, whether by means of state criminal prosecution, federal criminal prosecution or other administrative action. Such a commitment was made by the Staff Director and reinforced by representations made by myself and Cpl. C. L. Hughes of the West Virginia State Police to Phillip Graziani. These commitments were to the general effect that we intended to grant Phillip Graziani the fullest possible immunity from criminal prosecution, whether state or federal, obtainable at law in return for his cooperation. The representations also involved assurances to Phillip Graziani that the records of the PPC were confidential and not discoverable by any other state agency for any purpose. Subsequent to these representations and as a consequence of them, Mr. Graziani was granted immunity by order of the Intermediate Court of Kanawha County, West Virginia.

Based upon his reliance upon these representations and the order of the Court, Phillip Graziani provided information of significant value to the PPC and the Grand Jury of Kanawha County. It is noteworthy that at the time of his cooperation, Phillip Graziani was not in jeopardy of any criminal prosecution and that his cooperation was complete and continuous. The most featured aspect of his cooperation involved the information he provided to a federal grand jury. That information was initially developed in the State Grand Jury and then proferred to the federal government by the undersigned at the express direction of Mr. Grazi-

ani and subject to the same representations and assurances of the fullest immunity pertaining thereto for the stated purpose of clearing up a situation that was destructive of the entire federal housing program in West Virginia. This situation was not only not known but not even suspected at the time and but for Mr. Graziani's help it might still exist.

In my experience with many witnesses from every segment of West Virginia public and private life Phillip Graziani's cooperation stands out as the most complete and continuing encountered in my year and a half's work in West Virginia.

If a personal opinion is in order, I believe that Mr. Graziani's cooperation was more prompted by a commitment to remedying a corrupt situation than that of any witness I encountered. It seems very undesirable to have administrative punishment meted out to a man whose recent conduct has been of great value to the State of West Virginia while there are others of far greater involvement who remain untouched by a disciplinary action because they chose to not cooperate in the state and federal investigative efforts.

[Signature] John T. Coyne

STATE OF WEST VIRGINIA

COUNTY OF FAIRFAX

I, Carolyn B. Laws, the undersigned Notary Public in and for the County and State aforesaid, whose commission expires on the 16th day of March, 1975, do hereby certify that John T. Coyne whose name is signed to the foregoing Affidavit, personally appeared

before me in my County and State aforesaid, this 13th day of March, 1973 and acknowledged the same.

GIVEN under my hand and seal this 13th day of March, 1973.

[Signature] Carolyn B. Laws
NOTARY

AFFIDAVIT

The undersigned, Charles L. Hughes, after being first duly sworn, deposes and says that:

1. He is a Member of the West Virginia Department of Public Safety and since February of 1969, has been assigned as a Special Investigator with the Purchasing, Practices and Procedures Commission of the State of West Virginia.

2. Acting in that capacity and with John T. Coyne, the Chief Investigative Attorney with the Commission and Patrick Casey, the Prosecuting Attorney of Kanawha County, West Virginia, in the months of November and December, 1969, conferences were had with Philip J. Graziani concerning information sought by the above named persons and the affiant.

3. As a result of these conferences Mr. Graziani volunteered certain information after being assured by affiant and the other aforesaid persons in the presence of his then attorney that nothing said or furnished by Mr. Graziani would be used against him in any manner whatsoever and for any purpose. More specifically, affiant and these other officials specifically assured Mr. Graziani that any information given would

remain confidential and that he would be immune from any penalty and forfeiture of any nature.

4. Based upon these assurances Mr. Graziani was granted immunity and testified before the Grand Jury of the Intermediate Court of Kanawha County, West Virginia.

5. Thereafter, affiant Mr. Graziani met with Special Agent Thomas Hughes of the Federal Bureau of Investigation, at Mr. Hughes' request. Prior to the interview of Mr. Graziani, Agent Hughes started to give Mr. Graziani a "Miranda" warning at which time affiant told Agent Hughes that such a warning was not consistent with the agreements and promises previously made to Mr. Graziani by affiant and other officials, that no warnings had ever been given to Mr. Graziani by affiant or anyone else and none were required at that time. Accordingly, no warnings were given to Mr. Graziani by Agent Hughes.

And further affiant sayeth not at this time.

[Signature] Charles L. Hughes

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, Sarah Sheer, the undersigned Notary Public in and for the County and State aforesaid, whose commission expires on the 8th day of September, 1981, does hereby certify that Charles L. Hughes, whose name is signed to the foregoing Affidavit, personally appeared

before me in my County and State aforesaid, this 15th day of March, 1973 and acknowledged the same.

Given under my hand this 15th day of March, 1973.

[Signature] Sarah Sheer
Notary Public

CERTIFICATE OF SERVICE

I, Leo Catsonis, one of the attorneys for the petitioner, and a member of the Bar of The Supreme Court of the United States, hereby certify that, on the 15th day of March, 1974, I served three copies of the foregoing Petition for a Writ of Certiorari on the respondent by depositing same in a United States mail box, with postage prepaid, addressed to counsel of record for the Respondent, John O. Kizer, Esquire, 1200 Charleston National Plaza, Charleston, West Virginia 25301. I further certify that all parties required to be served have been served.

Leo Catsonis

Leo Catsonis
207 Security Building
Charleston, West Virginia 25301

Of Counsel for Petitioner